Supreme Court Will Review Army Scrutiny of Civilians

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The Supreme Court agreed yesterday to hear the federal government's argument that courts cannot and should not consider complaints about military surveillance of civilians.

Responding to a Justice Department petition, the court called for review of a decision by the U.S. Court of Appeals here that would require the Pentagon to justify the gathering and storing of data on lawful but controversial activities of citizens.

Civil liberties and war protest groups persuaded the lower court that their claims of government intimidation and illegal Army activity unrelated to its mission were sufficient to warrant a full trial in federal district court.

The government, emphasizing that the intelligence gathering is through monitoring public meetings and clipping newspapers, contends that such claims are too vague for courts to handle and that anyone courageous enough to sue the government hasn't been inhibited by government action.

Although the issue won't be decided until next year after oral argument, the Justice Department won critical contest by obtaining review at this stage of the lawsuit that was filed last year. Lawyers for the protesters urged the court to review the case only after a full airing of the evidence in a trial court.

Although the court is expected to be at full strength when the case is argued, it was considered doubtful that William H. Rehnquist, the assistant attorney general nominated for one vacancy, could participate in the decision.

Rehnquist defended the government practices in hearings before the Senate Constitutional Rights Subcommittee. His assertion that certain surveillance tactics raised no constitutional questions and his plea that Congress rely on the "self-discipline" of the executive branch aroused concern among several senators. Rehnquist and Lewis F. Powell Jr., the other nominee, were questioned closely on the subject at their confirmation hearings.

Solicitor General Erwin N. Griswold and Robert C. Mardian, assistant attorney general for internal security, told the court that the protesters' complaints amounted only to a "threat of the 'unknown' " which "is not sufficient to invoke the judicial process."

They added that questions about the possible "chilling effect" of the surveillance had become "largely academic" since the Army ordered its intelligence personnel "to concentrate on the more important and likely sources and locales of violence."

The lower court decision which ordered District Court Judge George L. Hart Jr. to hold a full hearing, was written by Judge Malcolm R. Wilkey with the concurrence of Judge Edward A. Tamm. Judge George E. MacKinnon dissented.

In other action:

Criminal Trials

The court agreed to decide whether a defendant may be denied the right to testify in his own defense under a Tennessee law that requires the accused to be the first defense witness if he testifies at all. The state says the law prevents a defendant from adjusting his testimony to that of other witnesses and defense lawyers say it unfairly curbs their case.

By a unanimous vote the court reversed the conviction of a Little Rock raud defendant because the prosecutor commented on his failure to testify in his own behalf and the trial judge refused to caution the jury that the accused was not required to do so.

Habeas Corpus

The court agreed to decide whether a military reservist is restricted to one federal court—the one in the district where his records are kept—in filing a habeas corpus petition for military discharge as a conscientious objector.